



**Testimony of Leon Smith, Esq. on behalf of the Center for Children's Advocacy
In Support, with Proposed Modifications, of House Bill No. 5170
An Act Concerning Student's Right to Privacy in Their Mobile Electronic Devices**

**Committee on Education
February 27, 2018**

Representative Fleischmann, Senator Slossberg, Senator Boucher and the other esteemed members of the Education Committee, I submit this testimony on behalf of the Center for Children's Advocacy, a non-profit organization affiliated with the University Of Connecticut School Of Law in support of House Bill No. 5170. The Center provides legal services for poor children in Connecticut's communities through individual representation and systemic advocacy. I am the Director of the Center's Racial Justice Project, whose aim is to provide advocacy and promote reform on behalf of youth of color who are disproportionately represented in Connecticut's school discipline data as well as in the juvenile justice system. To that end, the Center has represented individual youth in school disciplinary proceedings and in juvenile justice system matters and has been a consistent presence in working on educational policy matters through our membership in the Juvenile Justice Policy Oversight Committee (JJPOC) and in convening policy tables and task forces in Connecticut's largest cities.

Accessibility of mobile electronic devices to young people is at an all-time high, as 56% of children 8-12¹ and 88% of teenagers 13-17² have a cell phone. With this increased access, it is imperative to take necessary steps to ensure that these students have adequate protection from unlawful searches and invasions of privacy in these devices. These devices are so much more than just a phone: they are truly a gateway into the private lives of our youth. Every note they pass to a friend, every song they listen to, every photo they take, even intimate details of their lives similar to a diary are all stored inside these devices. These are private details that certainly should be protected in the same way, or to an even greater extent, than a student's locker or backpack.

The legislature must ensure that there is uniformity in practice around the search and seizure of mobile electronic devices in Connecticut schools and that all schools abide by the constitutional standard established by the United States Supreme Court.

The United States Supreme Court has held that students do have a right to privacy in school. Before conducting a search of a student, a school official must have **reasonable suspicion** that the search would turn up evidence of a crime or violation of school rules, the scope of the search must be reasonable based upon the suspicion at the beginning of the search and the need to maintain order in the school must outweigh the student's legitimate right to privacy.³ At a minimum, the State of Connecticut should keep up with technology and provide this same level of protection for student's electronic devices by codifying this standard.

¹ <http://www.nclnet.org/newsroom/press-releases/681-survey-majority-of-tweeners-now-have-cell-phones-with-many-parents-concerned-about-cost>

² <http://www.pewinternet.org/2015/04/09/a-majority-of-american-teens-report-access-to-a-computer-game-console-smartphone-and-a-tablet/>

³ Safford v. Redding, 129 S.Ct. 2633 (2009)

This bill is also needed because of the complete lack of uniformity around the treatment of cell phones and electronic devices in Connecticut schools. Despite the widespread availability of cell phones to young people, school districts have a hodgepodge of unequal privacy policies, with some school districts explicitly stating that students have no right to privacy in their electronic devices. Other school districts have flawed policies that purport to give school administrators the ability to demand students' passwords for private personal devices without cause. This amounts to **many grave violations of students' privacy** occurring in our state.

Protecting student privacy will reduce unnecessary school disciplinary and juvenile justice system involvement

Preventing schools from conducting searches of students' devices without adequate suspicion not only upholds students' privacy and Fourth Amendment right to freedom from unreasonable search and seizure, it also decreases the chance that a student ends up receiving significant school discipline or entering the juvenile justice system. In 2016, statewide data from the State Department of Education⁴ found that Black and Latino boys were 2 to 3 times as likely to be suspended or expelled from school and Black and Latino girls were between 2 to 5 times as likely to be suspended or expelled from school as their white counterparts, often for the same or similar behaviors. The majority of these suspensions and expulsions overall were for non-violent school policy violations. Without protections in place, one could easily imagine a school administrator conducting random searches of students' cellphones without suspicion and finding profane language, an inappropriate photograph or another school policy violation. Even if that discovery only led to a suspension or expulsion, rather than arrest, evidence has shown time and again that days away from school due to disciplinary actions increase a child's risk of dropout and further system involvement. Such potentially life altering consequences should, at the very least, be based on reasonable suspicion and not random acts of intrusion.

There are amendments needed to further strengthen this bill and protect student privacy

This bill accomplishes this aim, but The Center feels that it should also be **amended in several ways** to further enhance the protection of privacy rights of students. **First**, the bill should include stronger parental notification language around the search of mobile electronic devices. The current language provides that parents and guardians are notified within 24 hours of the search of a student's mobile electronic device. This is not sufficient. Many parents provide their children with cell phones and rely upon them to convey personal family information as well as keep track of their children's whereabouts and well-being. This type of personal information should not be searched without requisite cause and if a search is to happen, a parent should have the right to be notified **prior to the search taking place** absent some risk of imminent danger to the student or others. **Second**, because of this reliance that parents have on cell phones in keeping track of their children, this bill should require that cell phones that are seized and searched be returned to the student or to the parent or guardian at the end of the school day. **Third**, in light of the aforementioned lack of uniformity in Connecticut with regard to the search and seizure of electronic devices, school districts should be required to include the provisions of this bill in their Code of Conduct. **Lastly**, while the bill requires reasonable suspicion and limits the scope of searches, it should specifically, in subsection (c), **expressly state that any information and evidence beyond the scope of the search is not admissible in any school disciplinary action against the student.** The language states that searches should be strictly limited to finding evidence of a suspected policy violation or to prevent imminent personal injury to such student or others, and should **immediately cease** upon finding sufficient evidence or no evidence of the suspected violation, or preventing such imminent personal injury to such student or others. If administrators abuse their authority and fail to cease their search, extending it beyond the initial scope, anything found as a result of a failure to follow the law should absolutely be inadmissible and unable to be used in a school disciplinary proceeding against the student.

⁴ http://www.sde.ct.gov/sde/lib/sde/pdf/board/boardmaterials040616/report_on_student_discipline.pdf. P. 27

For these reasons, I strongly encourage you to support House Bill 5170 with the proposed modifications mentioned in the previous paragraph. Thank you all very much for your time and attention to this very important issue.

Respectfully submitted by:



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AN ACT CONCERNING STUDENT'S RIGHT TO PRIVACY IN THEIR MOBILE ELECTRONIC DEVICES

Proposed legislation would:

This legislation will amend the Connecticut General Statutes to protect student privacy by ensuring that there are uniform procedural standards for school administrators who seek to seize and search a student's personal mobile electronic device.

The Problem:

Current case law holds that student searches by school administrators are subject to the Fourth Amendment and that reasonable suspicion is required before a student, or a student's personal effects, can be searched.¹ This long standing legal precedent, however, has never been adopted into our General Statutes.

Why is this language necessary in statute?

This lack of statutory direction has created a complete lack of uniformity around the treatment of cell phones and personal electronic devices in Connecticut schools. Despite the widespread availability of cell phones to young people, school districts have a hodgepodge of unequal policies around student privacy and personal electronic devices. Some school districts explicitly state that students have **no** right to privacy in their electronic devices while others have flawed policies that purport to give school administrators the ability to demand students' passwords for private personal devices without cause.

This lack of uniformity in policies leads to **grave violations of students' privacy** that can give rise to significant school disciplinary consequences or juvenile justice system involvement.

How will this bill help students and their parents in Connecticut?

This bill ensures that all Connecticut schools operate under the constitutional standard established by the U.S. Supreme Court case *New Jersey v. T.L.O.* By preventing schools from conducting searches of students' electronic devices without adequate suspicion, this bill would uphold student's Fourth Amendment right to be free from unreasonable searches and seizures while also reducing situations where a student can face school discipline or juvenile justice system involvement based on a violation of their rights. Studies have shown that suspension, expulsion and arrest are all potentially life altering consequences. These should, at the very least, be based on reasonable suspicion and **not random acts of intrusion**. Furthermore, the new standards created by this legislation are procedural in nature, so there are no costs to local and regional school districts.

¹ *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)

Additional provisions that should be included in this legislation:

This bill is strong but should also include the following provisions to further protect the privacy rights of students:

- This bill should include a provision to protect both the student and the parent or guardian's right to privacy by requiring that parents receive notification prior to a school administrator searching their child's phone.
 - Parents often rely on cell phones to convey personal family information to their children. An intrusion into this space should not happen without notifying a parent first, absent evidence of imminent danger to the student or others.
- This bill should expressly state that any information and evidence discovered beyond the scope of the search is **not admissible** in any school disciplinary action against the student.
 - The language of this bill states that searches should be strictly limited to finding evidence of a suspected policy violation or to prevent imminent personal injury to such student or others, and should immediately cease upon finding sufficient evidence or no evidence of the suspected violation, or preventing such imminent personal injury to such student or others.
 - If administrators abuse their authority and fail to cease their search, extending it beyond the initial scope, anything found as a result of a failure to follow this law should absolutely be inadmissible and unable to be used in a school disciplinary proceeding against the student.
- This bill should require that cell phones seized from a student are returned to the student or parent/guardian at the end of the school day.
- This bill should expressly create a sense of uniformity across the state by requiring that all school districts include its provisions in their respective Codes of Conduct.



General Assembly
February Session, 2018

Raised Bill No. 5170

LCO No. 1270

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Referred to Committee on EDUCATION

Introduced by:

(ED)

AN ACT CONCERNING STUDENTS' RIGHT TO PRIVACY IN THEIR MOBILE ELECTRONIC DEVICES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective July 1, 2018*) (a) As used in this section:

(1) "Mobile electronic device" means any hand-held or other portable electronic equipment capable of providing data communication between two or more individuals, including, but not limited to, a mobile telephone, as defined in section 14-296aa of the general statutes, a text messaging device, a paging device, a personal digital assistant, a laptop computer, equipment that is capable of playing a video game or a digital video disk or equipment on which digital images are taken or transmitted; and

(2) "School employee" means: ~~-(A) A~~ A teacher, substitute teacher, school administrator, ~~school superintendent,~~ guidance counselor, ~~school counselor,~~ psychologist, social worker, nurse, physician, ~~or~~ or school paraprofessional; and ~~or coach employed by a local or regional board of education or working in a public or private elementary, middle or high school; or (B) any other person who, in the performance of his or her duties, has regular contact with students and who provides services to or on behalf of students enrolled in a public~~

~~elementary, middle or high school, pursuant to a contract with the local or regional board of education.~~

(3) "School administrator" means a superintendent, principal, or vice principal.

(b) No school employee may take custody of a student's mobile electronic device for purposes of accessing any data or other content stored upon or accessible from such device, or compel a student to produce, display, share or provide access to any data or other content stored upon or accessible from such device, except a school employee may take custody of a student's mobile electronic device if (1) such device is located on school property, and (2) the school employee has a reasonable suspicion that a student (A) has violated or is violating an applicable educational policy and that such device contains evidence of the suspected violation, or (B) poses a risk of imminent personal injury to such student or others. Upon taking custody of a student's mobile electronic device, the school employee shall immediately turn over such device to a school administrator.

(c) A school administrator may conduct a search of a student's mobile electronic device ~~taken~~seized pursuant to subsection (b) of this section only after such school administrator notifies the parent or guardian of the student (1) that a school employee has taken custody of the student's mobile electronic device, (2) of the suspected violation, (3) of the explanation of the reasonable suspicion that gave rise to an employee taking the device, (4) what the school administrator expects to find on the device and the portion of the device the school administrator plans to search for evidence, and (5) that the device will be searched. A school administrator may conduct a search of a student's mobile electronic device seized pursuant to subsection (b) of this section prior to notifying the parent or guardian of the student if a school employee has a reasonable suspicion that the student poses a risk of imminent personal injury to such student or others. Any evidence that is discovered on a personal electronic device in violation of this section shall not be admissible in any school disciplinary action against a student. ~~Any such search shall (1) be strictly limited to finding evidence of the suspected policy violation or to prevent imminent personal injury to such student or others, and (2) immediately cease upon (A) finding sufficient evidence or no evidence of the suspected violation, or (B) preventing such imminent personal injury to such student or others.~~

(d) Any mobile electronic device seized shall be returned to the parent or guardian of the student at the end of the school day. ~~A school employee who has taken custody of and turned over a mobile electronic device pursuant to subsection (b) of this section shall immediately submit a written report to the principal that explains the reasonable suspicion that gave rise to such school employee taking custody of such device and to whom such device was turned over to after taking custody of such device.~~

(e) A school employee who has taken custody of and turned over a mobile electronic device, pursuant to subsection (b) of this section, shall immediately submit a written report to the principal that explains the reasonable suspicion that gave rise to such school employee taking custody of such device and to whom such device was turned over to after taking custody of such device.

Not later than twenty-four hours after the completion of the search, if a search was conducted, ~~pursuant to subsection (b) of this section,~~ the principal shall notify the student and the parent or guardian of the student of ~~the suspected violation and~~ what data, ~~if any,~~ was accessed from such device during the search of such device and what evidence of a violation of an application educational policy or a risk of imminent personal injury to the student or others was found, and provide a copy of the report explaining the reasonable suspicion that gave rise to the search to the student's parent or guardian.

(f) The provisions of this section shall be included in each school and district code of conduct.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2018	New section

Statement of Purpose:

To prohibit a school employee from taking custody of or searching a student's mobile electronic device except in certain circumstances.